

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JAMES ROBINSON, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

No. 1:19-cv-10749-FDS

**NATIONAL STUDENT
CLEARINGHOUSE,**

Defendant.

**DECLARATION OF BENJAMIN ELGA IN SUPPORT OF PLAINTIFF’S MOTION
FOR AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES
INCURRED ON BEHALF OF
JUSTICE CATALYST LAW, INC.**

I, Benjamin Elga, declare as follows:

I. INTRODUCTION

1. I am the founding Executive Director of Justice Catalyst Law, Inc. (“JCL”). JCL is a law firm with nonprofit tax status. I submit this Declaration in support of the firm’s application for an award of attorneys’ fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by our firm in connection with this litigation against Defendant National Student Clearinghouse.

2. JCL, along with Francis Mailman Soumilas, P.C. and the National Consumer Law Center, represented Plaintiff James Robinson in this matter.

3. This Declaration describes the history and experience of JCL and the work undertaken by the firm in connection with this litigation and summarizes the work done by each attorney and paralegal who was involved in the litigation.

4. Along with the attorneys working on this case, I was in charge of staffing the case with appropriate, experienced counsel and support staff working at JCL and supervising their work. Consistent with the firm's usual practice, tasks and assignments were apportioned to avoid the expenditure of duplicative time and redundant staffing. Time expended which has been considered duplicative or redundant has been eliminated. Time expended in preparing this application for fees and reimbursement of expenses has been included in this request.

II. JCL FIRM HISTORY AND EXPERIENCE

5. Justice Catalyst Law is a human and civil rights law firm founded in 2018.

6. Justice Catalyst Law's work emphasizes the commercial and private rights violations that underlie systemic social and economic injustice. JCL applies a varied set of legal disciplines such as competition law, consumer protection, employment law, civil rights, criminal justice, and environmental justice, often in contexts where advocates have not previously focused on those disciplines.

7. I started the law firm in 2018 as the Executive Director along with the Legal Director, Brian Shearer. I am based in New York City, NY, along with another attorney Kelly Jo Popkin, our paralegal Jessica Rahmoune, and other staff who did not bill for this case. Brian Shearer is based in Washington, DC with another attorney who did not bill for this case.

8. Prior to starting the firm, I was engaged in class practice in numerous consumer and antitrust class actions including *In re: Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.), *In re: Packaged Seafood Products Antitrust Litigation*, No. 15-md-2670 (S.D. Cal.), *Cason-Merenda v. Detroit Medical Center*, No. 06-15601 (E.D. Mich.), *Hadley v. Subaru of America, Inc.*, No. 15-7210 (D.N.J.) (sparking the recall of defective cars whose hoods flew open while driving), and *Noble v. Samsung Electronics America, Inc.*, No. 15-cv-03713 (D.N.J.).

9. Brian Shearer is Justice Catalyst Law’s founding Legal Director. He worked at the Consumer Financial Protection Bureau from when it was created in 2011 to when he helped start Justice Catalyst Law with me in 2018. Mr. Shearer worked at the CFPB while finishing law school, then became a lawyer for the CFPB in 2013, and worked his way up the bureaucracy until he became Director Richard Cordray’s Senior Advisor in 2017.

10. The Consumer Financial Protection Bureau is the federal agency responsible for administering the Fair Credit Reporting Act and overseeing both Consumer Reporting Agencies and the student loan industry. Mr. Shearer is a fellow at the Student Borrower Protection Center, a nonprofit devoted to accountability and justice in the student loan market. He also regularly speaks at events like the annual National Consumer Law Center conferences on student loan issues.

11. Before becoming Director Richard Cordray’s Senior Advisory, Mr. Shearer led the CFPB’s policy efforts overseeing the student loan industry. He also worked on a number of examinations and enforcement actions relating to the Fair Credit Reporting Act and other consumer laws. As part of this work, Mr. Shearer gained irreplaceable experience relating to the Fair Credit Reporting Act and the broader student loan industry in which the National Student Clearinghouse operates.

12. As Director Richard Cordray’s Senior Advisory, Mr. Shearer advised the Director on the legal and policy issues implicated in some of the most important decisions facing the CFPB, including on matters involving the Fair Credit Reporting Act, the major credit bureaus, and student loans, but also on matters involving other consumer laws and markets not implicated in this case. As a member of the “front office” of the agency that is responsible for administering the FCRA, Mr. Shearer is uniquely valuable to this case—there are perhaps a dozen lawyers in the country who have similar, uniquely relevant and high level CFPB experience.

13. Since opening its doors in late 2018, Justice Catalyst Law has filed a number of major class action cases, all of which are highly complex.

14. In a class action filed in 2019, JCL alleged Wells Fargo discriminates against DACA recipients by refusing to give them auto loans, as well as for violating the Fair Credit Reporting Act for pulling consumer reports on DACA recipients without a permissible purpose. *Pena v. Wells Fargo*, No. 3:19-cv-04065-MMC (N.D. Ca. Sept. 27, 2019).

15. In March 2019, JCL filed a class action against the National Association of Realtors and the four largest real estate brokerage companies, alleging that the defendants had entered a longstanding anticompetitive agreement to drive brokerage commissions up across the country. *Moehrl v. National Association of Realtors*, No. 1:19-cv-01610 (N.D. Ill. March 6, 2019).

16. Also in 2019, JCL filed a class action complaint alleging that the bail bond industry fixed prices for bail bond prices in California. *In re California Bail Bond Antitrust Litigation*, No. 4:19-cv-00717-JST (N.D. Cal. March 8, 2019).

17. JCL also filed a class action complaint against Maximus Federal Services, alleging that it had violated the Fair Debt Collection Practices Act when it engaged in involuntary collection activity to collect student loans on behalf of the Department of Education after collections should have been stayed under the terms of Borrower Defense to Repayment applications. *Bodor v. Maximus Federal Services, Inc.*, No. 5:19-cv-05787-EGS (E.D. Penn. Dec. 9, 2019).

18. In 2020, JCL filed a complaint under California's Private Attorney General Act against Amway in California state court, alleging that it had misclassified all of its participants as independent contractors under California law. *Orage v. Amway Corp.*, No. RG20049773 (Sup. Ct. Ca., Alameda County, Jan. 10, 2020).

III. HOURLY RATES

1. My hourly rate is \$700, Brian Shearer's is \$650, Kelly Jo Popkin's is \$450, and the firm's paralegals' is \$125.

2. The rates charged by the attorneys and paralegals of the firm are reasonable and within the range of the appropriate market rates charged by attorneys with comparable experience levels for litigation of a similar nature, given their experience level, practice concentration and background, and organizational seniority.

3. We based our rates on what other attorneys have filed for and received in New York and Washington, DC, the cities our attorneys work in, as described below.

4. This case originated with Mr. Shearer, and thus, he billed the vast majority of our firm's hours. We based Mr. Shearer's rate on the Legal Services Index *Laffey* Matrix, though we have not followed it exactly, as noted below. Courts often use the LSI *Laffey* Matrix to estimate hourly rates in Washington, DC, but it "is probably considered a conservative estimate of the actual cost of legal services in this area." *Salazar v. District of Columbia*, 809 F.3d 58, 65 (D.C. Cir. 2015) (affirming the use of the LSI *Laffey* Matrix). The U.S. Court of Appeals for the District of Columbia Circuit recently revisited the question of whether the LSI *Laffey* Matrix was the appropriate matrix for lawyers who litigate complex federal cases in the region, and the Court endorsed its continued use, rejecting a newer U.S. Attorney's Office *Laffey* Matrix. *DL v. District of Columbia*, 924 F.3d 585 (D.C. Cir. 2019).

5. Mr. Shearer graduated from law school in 2013, so the LSI *Laffey* Matrix would put Mr. Shearer into the 4-7 year category, which bills at \$458 per hour. The next category, 8-10 years, bills at \$661 and begins in a little over one month.

6. In other words, under the LSI *Laffey* Matrix, Mr. Shearer would bill \$458 on June 1, 2016 and \$661 on June 1, 2020. Instead of using \$458, we determined Mr. Shearer's rate on a growth line connecting those two points. Using monthly increments, that puts Mr. Shearer at \$652.54 as of the month of this filing, which we rounded down to \$650.

7. We deemed this adjustment appropriate in light of the following considerations: (1) the LSI *Laffey* Matrix imposes a sharp cut-off between seven and eight years of experience, and does not allow for more gradual rate growth, a dynamic that is more likely to be the market reality, (2) the Federal Court of Appeals in the D.C. Circuit indicated in *Salazar* that the LSA *Laffey* Matrix is a "conservative" estimate for Washington, DC, (3) Mr. Shearer is fairly close to the \$661 cut-off, which is little over one month away as of writing this affidavit, (4) Mr. Shearer holds a leadership role at JCL similar to managing partner at a private law firm, which warrants a premium, and (5) Mr. Shearer brings uniquely valuable experience to this case given his high-level role at the Consumer Financial Protection Bureau, the federal agency responsible for administering the Fair Credit Reporting Act.

8. We set my rates, Kelly Jo Popkin's rates, and our paralegal's rates based on what other law firms have filed for and received in New York, in consultation with our lawyers at firms doing similar work.

9. I am six years out of law school. As the organization's leader and Executive Director, my role is equivalent to a founding or named partner at a private law firm. I am admitted to practice in New York, New Jersey, and Massachusetts.

10. Partner rates in the Southern District of New York "in excess of \$1,000 an hour[]" are by now not uncommon in the context of complex commercial litigation." *U.S. Bank Nat'l Ass'n v. Dexia Real Estate Capital Mkts.*, 12 Civ. 9412 (PAE), 2016 U.S. Dist. LEXIS 165268, at

*26 (S.D.N.Y. Nov. 30, 2016) (awarding partner rate of \$1,055 per hour); *see also Vista Outdoor, Inc. v. Reeves Family Trust*, 16 Civ. 5766 (JSR), 2018 U.S. Dist. LEXIS 102224, at *15-16 (S.D.N.Y. May 24, 2018) (awarding partner rate of \$1,170 per hour); *MSC Mediterranean Shipping Co. Holding SA v. Forsyth Kownacki LLC*, 16 Civ. 8103 (LGS), 2017 U.S. Dist. LEXIS 49540, at *8 (S.D.N.Y. Mar. 30, 2017) (awarding partner rate of \$1,048.47 per hour); *see also Themis Capital v. Democratic Republic of Congo*, 09 Civ. 1652 (PAE), 2014 U.S. Dist. LEXIS 124208, at *21-22 (S.D.N.Y. Sept. 4, 2014) (approving average partner rates of \$871.04/hour as reasonable in complex litigation); *United States ex rel. Fox Rx, Inc.*, 2015 U.S. Dist. LEXIS 49477, at *5-6 (approving \$836/hour partner rate in a 2015 False Claims Act case); *Woburn Retirement Sys. v. Salix Pharms., Ltd.*, 14-CV-8925 (KMW), 2017 U.S. Dist. LEXIS 132515, at *15 (S.D.N.Y. Aug. 18, 2017) (approving partner rates of \$995); Opinion and Order at 48, *In re Bioscripts, Inc. Secs. Litig.*, 12-cv-6922 (AJN), Dkt. 134 (S.D.N.Y. July 26, 2017) (approving partner rates between \$700 and \$975); *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 U.S. Dist. LEXIS 54587, at *54 (S.D.N.Y. Apr. 26, 2016) (approving partner rates between \$834 and \$1,125), approving 13-md-2476 (DLC), Dkt. 135 at 5 (S.D.N.Y. filed Apr. 8, 2016) (application with rates); *Regeneron Pharms., Inc. v. Merus, N.V.*, 14-cv-1650 (KBF), 2018 U.S. Dist. LEXIS 115661, at *12 (S.D.N.Y. June 25, 2018) (approving partners rates up to \$908 per hour); *In re Flag Telecom Holdings Ltd. Sec. Litig.*, 02 Civ. 3400 (WCC), 2010 U.S. Dist. LEXIS 119702, at *75 (S.D.N.Y. Nov. 8, 2010) (approving partner rates of \$950).

11. In recognition of the fact that 6 years of experience is likely lower than the average amount of experience held by a law firm partner, we set my rate at the lowest rate we found in our survey, at \$700.

12. Kelly Jo Popkin is 3 years out of law school, and equivalent to an associate.

13. Precedent supports hourly associate rates in the range of \$450–\$700 in the Southern District of New York. Since as far back at 2015, Judge Cote approved a rate of \$631.75 for an eighth-year associate and \$541.50 for a fourth-year associate, while finding that average associate hourly billing rates were well above those amounts. *Id.* Other cases have similarly approved associate rates ranging from \$400–\$700 per hour. *See, e.g., Vista Outdoor*, 16 Civ. 5766 (JSR, 2018 U.S. Dist. LEXIS, at * 15-16 (S.D.N.Y. May 24, 2018) (awarding associate rates up to \$693 per hour); Opinion and Order at 48, *In re Bioscripts, Inc. Secs. Litig.*, 12-cv-6922 (AJN), Dkt. 134 (S.D.N.Y. July 26, 2017) (approving associate hourly rates between \$450 and \$550); *In re Credit Default Swaps Antitrust Litig.*, No. 12MD2476 (DLC), 2016 U.S. Dist. LEXIS 54587 (S.D.N.Y. Apr. 26, 2016) (approving associate rates up to \$714 per hour); *Themis Capital v. Democratic Republic of Congo*, 09 Civ. 1652 (PAE), 2014 U.S. Dist. LEXIS 124208, at *21-22 (S.D.N.Y. Sept. 4, 2014) (approving average associate hourly rate of \$505.55).

14. Given Kelly Jo Popkin’s level of experience, we set her rate at the low end of these cases, at \$450.

15. We set paralegal Jessica Rahmoune’s rate at \$125 per hour based on *Murphy v. Lajaunie*, 2018 WL 7968908, at *12 (S.D.N.Y. Feb. 2, 2018) (“I find that an hourly rate of \$125 for paralegals is consistent with the prevailing rates in the community.”) (citing *Torres v. Gristede’s Operating Corp.*, 2012 WL 3878144, at *4 (S.D.N.Y. Aug. 6, 2012)).

16. We have attached a declaration from Jonathan Cuneo, founding partner of the law firm Cuneo Gilbert & LaDuca, LLP, attesting that our rates are reasonable. **Exhibit 1.** Jonathan Cuneo has over forty years of experience, including successfully representing plaintiffs in complex antitrust, civil and human rights, consumer protection, corporate governance, and securities class actions before federal and state courts. His law firm has lawyers in both New York City and

Washington DC. He compared the rates we are filing today to those his firm uses, and concluded are rates are consistent, taking into account experience and expertise level and relative organizational seniority.

IV. THE *ROBINSON* LITIGATION

17. My firm was instrumental in many aspects of this litigation from its inception through settlement, including:

- a. Developing the case theory from its outset;
- b. Drafting the Complaint and framing the allegations therein;
- c. Communications with Defendant's counsel regarding informal discovery in preparation for mediation proceedings;
- d. Working with co-counsel to prepare for and attend mediation before Judge Diane Welsh (Ret.) of JAMS;
- e. Extensive negotiations with Defendant's counsel regarding the drafting of the settlement agreement;
- f. Preparing the consent Motion for an Order Directing Notice to the Class;

18. JCL maintained a breakdown of the activities of the attorneys and paralegals working on the case, which were prepared based on contemporaneous computerized timekeeping, recording to the tenth of an hour. The lodestar of the firm for work performed with respect to the *Robinson v. National Student Clearinghouse* litigation totals \$80,955.00, broken down by timekeepers as follows:

Attorneys	Hourly Rate	Hours	Fees
Brian Shearer	\$650	120.6	\$78,390.00
Ben Elga	\$700	2.7	\$1,890.00
Kelly Jo Popkin	\$450	1	\$450.00
Paralegals	\$125	1.8	\$225.00

19. We anticipate Mr. Shearer or Ben Elga will perform approximately 15 more hours on this case, combined. At Mr. Shearer's lower rate, that would add an additional \$9,750, bringing the total lodestar to \$90,705.

20. The lodestar figure above does not include charges for expenses and costs of the litigation. The costs incurred throughout the litigation are billed separately, and such charges are not duplicated in the firm's billing rates.

21. JCL has incurred a total of \$138.48 in unreimbursed expenses in connection with the prosecution of this litigation. The expenses incurred in this action are reflected on the books and records of the firm. These books and records are prepared from expense vouchers, check records, software and other source materials and are an accurate recordation of the expenses.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: April 21, 2020

/s/ Benjamin Elga
Benjamin Elga
Attorney for Plaintiff James Robinson

Exhibit 1

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JAMES ROBINSON, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

No. 1:19-cv-10749-FDS

**NATIONAL STUDENT
CLEARINGHOUSE,**

Defendant.

**DECLARATION OF JONATHAN W. CUNEO IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF
EXPENSES INCURRED ON BEHALF OF
JUSTICE CATALYST LAW, INC.**

I, Jonathan Cuneo, declare as follows:

1. I am founding partner of the law firm Cuneo Gilbert & LaDuca, LLP. Our 20+ lawyers practice in four states and we maintain offices in the District of Columbia as well as New York City.

2. I have over forty years of experience successfully representing plaintiffs in complex antitrust, civil and human rights, consumer protection, corporate governance, and securities class actions before federal and state courts.

3. I have reviewed a final draft of Benjamin Elga's Declaration in Support of Plaintiff's Fee Petition for an Award of Attorneys Fees and Reimbursement of Expenses Incurred on Behalf of Justice Catalyst Law, Inc., which he is filing in the U.S. District Court of Massachusetts as part of the settlement in the *Robinson v. National Student Clearinghouse*. Case No. 1:19-cv-10749-FDS.

4. Benjamin Elga is the founding Executive Director of Justice Catalyst Law, and that

he graduated from law school in 2014, and during law school he worked at CGL. I am personally aware of Benjamin Elga's legal acumen and expertise because he worked with and for me directly for me at CGL before starting Justice Catalyst Law.

5. I understand that Brian Shearer is the founding Legal Director of Justice Catalyst Law, and that he graduated from law school in 2013.

6. I understand that Kelly Jo Popkin is an attorney with Justice Catalyst Law who graduated from law school in 2017.

7. I understand that Jessica Rahmoune is a paralegal for Justice Catalyst Law.

8. I understand that Justice Catalyst Law is filing the following hourly rates:

- a. Benjamin Elga, Executive Director -- \$700
- b. Brian Shearer, Legal Director -- \$650
- c. Kelly Jo Popkin, Attorney -- \$450
- d. Jessica Rahmoune, Paralegal -- \$125

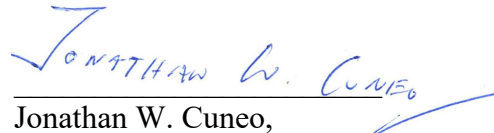
9. I have otherwise reviewed a final draft of the full contents of Benjamin Elga's declaration, including the analysis of how Justice Catalyst Law came to those rates. I agree that their method is a reasonable method for setting their rates.

10. I consider these rates to be reasonable approximations of the market rate given Elga's, Shearer's, Popkin's, and Rahmoune's respective levels of experience, city of employment, practice concentration and background, and organizational seniority.

11. I have compared these rates to the rates charged by my own firm. I attest that they are comparable to what Cuneo Gilbert & LaDuca, LLP bills taking into account level of experience, city of employment, practice concentration and background, and organizational seniority.

I declare under penalty of perjury under the laws of the United States that the foregoing
is true and correct.

DATED: April 20, 2020


Jonathan W. Cuneo,
Founding Partner
Cuneo Gilbert & LaDuca, LLP